



*This Week in Employment Law*

**17-02-2020**

## Care sector awaits key NMW decision

**Last week, the Supreme Court heard a care worker's appeal against an earlier decision denying her the national minimum wage (NMW) for time she spends asleep during a sleep-in shift. We now await the decision which will have significant consequences on wage bills in the care sector. Here, we take a look at the story so far.**

- The Supreme Court heard an appeal on behalf of a worker who had taken her employer, Mencap, to employment tribunal for failure to pay the NMW. Her claim is based on the assertion that, whilst asleep during an overnight sleep-in shift, she is 'working' and so entitled to receive NMW for those hours.
- Mencap had only counted time she spent awake for the purposes of working as time which attracted NMW.
- Previously, the Court of Appeal had declared that workers who are asleep during a sleep-in shift are not 'working'.
- However, earlier judgments from lower courts had decided that the care worker was entitled to NMW whilst asleep.
- The Supreme Court's decision on whether sleeping hours attract NMW is eagerly awaited due to the previous contradictory decisions. It will be the final decision because no further appeal can be made.
- If the Court disagrees with the Court of Appeal and reinstates the earlier findings that sleeping hours attract NMW, care employers will have to immediately review their pay practices to ensure their workers are being paid enough.

### Critical resignation letters should not be ignored

A parting email or letter from an employee can be used as a chance for them to get off their chest things that have irked them during employment that they didn't want to say face to face. It has been reported that an ex-employee of kitchen retailer, Wren Kitchens, recently took this opportunity.

#### Did you know?

Whilst criticism of colleagues or management can appear to be bitter words from an unhappy employee, employers shouldn't disregard it. Some may simply be untrue, but other words may present a reality of why employees choose to leave which employers can work on.

### Apprentice levy funds "not being used"

Figures obtained by the BBC show that employers who are paying money into their apprenticeship levy accounts are not then using the money to fund apprenticeships in their organisation. One possible reason is the outdated notion that apprentices can be difficult to manage.

#### Did you know?

In England and Wales, apprentices are treated like 'standard' employees in relation to discipline and capability issues. This means employers have the flexibility in the first two years to decide if the apprentice is right for their organisation.

### New immigration system confirmed for 1 January 2021

The Prime Minister has confirmed the new points based immigration system will be implemented on 1 January 2021. A 'simpler, fairer' system has been promised which will not discriminate between countries but aims to end reliance on importing cheap, low skilled labour.

#### Did you know?

Until 31 December 2020, EU nationals may enter the UK to work and must apply to the EU Settlement Scheme in order to remain in the UK after 30 June 2021. EU nationals entering the UK from 1 January 2021 must apply via the new points based scheme which will assess their skills and qualifications.

With last week's announcement that the naming and shaming scheme to call out NMW 'underpayers' will be reinstated in April 2020, it's vital that care sector employers keep up to date with their obligations surrounding payment and sleep-in shifts. For more information on the Mencap case or in NMW in general, contact our Payroll Advisory Service.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.